

46 Am. Jur. 2d Judges § 26

American Jurisprudence, Second Edition | February 2022 Update

Judges

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V. Powers and Duties

A. In General

§ 26. Appointment and removal of judicial officers; fixing salaries

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  22(5), 23, 24

Although there is authority for the view that statutes imposing or conferring upon judges the power to appoint other officers are unconstitutional as an encroachment on the legislative or executive department, or both,¹ there is also authority to the effect that such statutes are valid,² even if the duties of the appointees have no connection with the functions of courts.³

Although the exact limit of the power of judges as to appointments is unclear, judges may appoint many officers of inferior grades, especially those who are more or less under the control of the court making the appointment or necessary to the existence of a court, such as clerks, reporters, and bailiffs, and officers necessary to enable the court to transact business.⁴

Under statutes in some jurisdictions, certain judges have the authority to fix the salaries of their employees,⁵ so long as the employees are shown to be absolutely necessary to the operation of the court.⁶

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Footnotes

¹ [In re Opinion of the Justices](#), 300 Mass. 596, 14 N.E.2d 465, 118 A.L.R. 166 (1938).

² [Minsinger v. Rau](#), 236 Pa. 327, 84 A. 902 (1912).

³ [Sartin v. Snell](#), 87 Kan. 485, 125 P. 47 (1912).

An order, made pursuant to statute by the presiding judge of a county municipal court district, that the county marshal hire two more deputies was valid and enforceable based on a finding by the council of supervising judges for the district that an emergency existed by reason of the legislature's creation of two new judgeships; the statute on which the order was based conferred on the judges in clear and unambiguous language the

- power to cope with an increase in business or other emergency. [Board of Supervisors v. Krumm](#), 62 Cal. App. 3d 935, 133 Cal. Rptr. 475 (4th Dist. 1976).
- 4 [State v. Jackson](#), 134 La. 599, 64 So. 481 (1913).
- The amendment of a statute, changing "hearing officer" to "housing judge" and denominating housing judges "duly constituted judicial officers" merely invested housing judges with authority and dignity, while keeping housing judges as essential referees appointed by the court to assist it in the performance of its judicial functions; thus, the statute as amended did not violate the doctrine of separation of powers by providing for the appointment of housing judges by members of the judiciary rather than by the executive branch of the government. [Babigan v. Wachtler](#), 133 Misc. 2d 111, 506 N.Y.S.2d 506 (Sup 1986), judgment aff'd, 126 A.D.2d 445, 510 N.Y.S.2d 473 (1st Dep't 1987), order aff'd, 69 N.Y.2d 1012, 517 N.Y.S.2d 905, 511 N.E.2d 49 (1987).
- 5 [Duncan v. Pogue](#), 759 S.W.2d 435 (Tex. 1988).
- 6 [Venhaus v. State ex rel. Lofton](#), 285 Ark. 23, 684 S.W.2d 252 (1985).

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